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Supreme Court of the United States

October Term, 1951.

No. 493.

ISBRANDTSEN COMPANY, INC.,
Petitioner,

v.

MATTHEW JOHNSON,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Brief and Appendix for Petitioner.

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IN THE

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No. 493.

ISBRANDTSEN COMPANY, INC.,
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v.

MATTHEW JOHNSON,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF ON BEHALF OF PETITIONER, ISBRANDTSEN COMPANY, INC., ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

OPINIONS BELOW.

The opinion of Chief Judge Kirkpatrick of the United States District Court for the Eastern District of Pennsylvania, filed May 19, 1950, appears at R. 15a to 18a, inclusive, and is reported at 91 F. Supp. 872. The opinion of Chief Judge Biggs of the United States Court of Appeals for the Third Circuit, filed August 17, 1951, appears at R. 32 to 36, inclusive, and is reported at 190 F. 2d 991.

JURISDICTION.

The jurisdiction of this Court to review the final judgment of the United States Court of Appeals for the Third Circuit is provided by § 1254 (1) and § 2101 (c) of Title 28, U. S. Code.

STATEMENT OF THE CASE.

This is a libel in admiralty by Respondent, a merchant seaman, to recover wages, the value of transportation from Philadelphia, Pennsylvania, to Seattle, Washington, and "double wages" under R. S. § 4529, 46 U. S. C. § 596.

Respondent joined the crew of Petitioner's steamship "Stephen W. Kearny" as a messman on February 3, 1948 at Seattle, Washington. On April 21, 1948 while the vessel was in the South Pacific en route to the United States, an altercation took place between Respondent and one Wells Brandon, another crew member, during which Respondent without justification attacked Brandon with a knife and wounded him so severely that it was necessary to divert the vessel from its course in order to get Brandon to a hospital (R. 15a).

As a result of Respondent's attack upon Brandon and the diversion of the vessel, Petitioner incurred expenses and losses amounting to $1,691.55 (R. 15a), representing the cost of hospitalization, medical care, repatriation and subsistence for Brandon, and the vessel's operating expenses attributable to diversion of the "Stephen W. Kearny" to the Island of Tonga.

After his assault upon Brandon, Respondent was confined aboard the vessel, and performed no duties. No wages were credited to Respondent after the date of the assault, and as the issues ultimately developed upon trial, Respondent made no claim for wages subsequent to April 21, 1948 (R. 13a).

When the voyage terminated at Philadelphia, Pennsylvania on May 31, 1948, Respondent was removed from the vessel by federal police authorities. He was not present at the pay-off of the crew on June 3, 1948. On June 11, 1948, Respondent's attorney made a demand upon Petitioner by telephone for the payment of Respondent's wages, which demand was refused. Petitioner refused to pay Respondent because it set off the wages which had accrued to

Respondent prior to the stabbing incident against the expenses incurred by Petitioner as a result of Respondent's assault upon Brandon (R. 13a).

Respondent then filed the present libel in admiralty. As originally drawn, the libel claimed wages in the amount of $750.27 and in a second cause of action claimed the value of transportation from Philadelphia, Pennsylvania to Seattle, Washington and "double wages" for withholding the wages and value of transportation which Respondent alleged were due him. Certain other issues not here material were raised by the original pleadings, but were subsequently removed from the case by stipulation (R. 12a). Likewise, by stipulation, the net amount of wages claimed by Respondent was asserted to be $439.27, and Petitioner admitted that as of April 21, 1948, the date of the stabbing incident, there had accrued to Respondent net earnings in that amount, which Petitioner refused to pay. Petitioner denied that Respondent was entitled to receive the sum of $439.27, or any part thereof (R. 12a).

Petitioner, in its answer to the libel, set up as a separate, complete and affirmative defense, and by way of counterclaim, that Respondent had attacked Brandon, wounded him and necessitated diversion of the vessel, and that by reason of the assault, Petitioner had incurred certain expenses. Petitioner further averred that the wages which would otherwise have been due Respondent had been lawfully retained by Petitioner on account of its loss, and claimed the balance of its loss from Respondent (R. 9a-10a).

The case proceeded to trial in the District Court before Chief Judge Kirkpatrick, who rendered his opinion on May 19, 1950. The Trial Judge found that the "facts upon which [Petitioner's] affirmative defense and counterclaim are based are fully established by the evidence" (R. 15a). However, he awarded Respondent wages in the amount of $439.27, plus the value of transportation, but denied Respondent's claim for "double wages." On June 21, 1950, a final decree was entered in conformity with Judge Kirk-

patrick's opinion (R. 18a), from which Petitioner took an appeal to the United States Court of Appeals for the Third Circuit.

On August 17, 1951, the Court of Appeals, in an opinion by Chief Judge Biggs, affirmed the judgment of the District Court (R. 32-36).

The Court of Appeals held that Petitioner could not recoup or set off its loss contemporaneously with Respondent's claim because Congress, in R. S. § 4596, 46 U. S. C. § 701, had "legislated in the field of assaults committed by seamen and saw fit to prescribe no penalty for an assault by seaman on seaman" (R. 35). In further support of its conclusion, the Court of Appeals adverted to the status of seamen as "wards of the admiralty," and expressed reluctance to "wipe away the benefits conferred by the statutes on seamen as a class because of the criminal conduct of one seaman" (R. 34).

Petitioner filed with the Court of Appeals a petition for rehearing (R. 39-47), which was denied on September 27, 1951 (R. 48). Petitioner filed a petition for writ of certiorari on December 26, 1951, and this Court granted the petition on March 3, 1952 (R. 50).

SPECIFICATIONS OF ERROR.

Petitioner urges that the Court of Appeals for the Third Circuit erred in the following respects:

1. In rejecting the established rule of the general maritime law, that a shipowner, in an action for wages and other financial emoluments by a seaman, can set off or recoup the pecuniary loss sustained by the shipowner as the result of a deliberate act of the seaman in violation of the contract of employment.

2. In construing a penal statute, R. S. § 4596, as amended, 46 U. S. C. § 701, to govern the civil rights and liabilities of seaman and shipowner, *inter se*, in a dispute involving solely the amount of money owing by one to the other at the conclusion of the voyage.

3. In invoking the doctrine that "seamen are wards of the admiralty" to support its denial of the equitable right of set-off or recoupment to a shipowner against whom a monetary claim had been asserted by a seaman who had attacked with a deadly weapon and seriously wounded a shipmate, thereby causing loss to the shipowner almost three times as great as the amount of the seaman's claim.

ARGUMENT.

Summary of Argument.

Under the general maritime law, Petitioner, when faced with an action for wages and other financial emoluments brought by the Respondent, had a right to set off or recoup the pecuniary loss which Petitioner had sustained as the direct result of Respondent's unjustified act in violation of the contract of employment. The rule of the general maritime law which supports Petitioner's right has evolved upon the fundamental principles of equity and natural justice which have uniformly been regarded as controlling considerations in guiding the deliberations of courts of admiralty.

The Petitioner's right of set-off or recoupment is not limited to those instances where Congress has affirmatively authorized a "forfeiture" or "deduction" from the seaman's wages by statute. Specifically, the fact that R. S. § 4596, as amended, 46 U. S. C. § 701 treats certain types of assaults by seamen, and does not proscribe the conduct exhibited by the Respondent in the case at bar, is of no moment in determining the present controversy. R. S. § 4596 is not an exclusive catalog of circumstances under which a shipowner is entitled to civil redress. This is purely a penal statute, and is not determinative of the civil rights and liabilities of seaman and shipowner, *inter se*, in a dispute involving solely the amount of money owing by one to the other at the conclusion of the voyage. Thus the statutory law does not impair the rule of the general maritime law which supports the right which Petitioner presently asserts.

The Courts of Appeals invoked what it conceived to be a controlling consideration of policy—that seamen are "wards of the admiralty"—in support of its denial to Petitioner of the right of set-off or recoupment. Even if it be assumed, *arguendo*, that in the present era there persists

any genuine necessity for the application of the "wardship" doctrine under circumstances not present here, nevertheless, the present case presents a striking instance of misapplication of the doctrine. Here the doctrine was invoked to exculpate from civil liability a seaman who had without justification attacked with a deadly weapon and seriously wounded a shipmate, and in so doing, also saddled his innocent employer with pecuniary loss almost three times as great as the amount awarded the seaman. Under these circumstances, it is peculiarly appropriate that this Court should examine and correct the present misapplication of the wardship doctrine, and should delimit the field of its operation to situations where its impact is not offensive to fundamental notions of justice.

I. Under the General Maritime Law, Petitioner Had the Right to Recoup or Set Off the Pecuniary Loss Sustained by It as the Result of Respondent's Acts, Against the Financial Emoluments Which Would Otherwise Have Been Payable to Respondent.

If any principle be well established in the maritime law, it is this: that although courts of admiralty lack certain characteristic *powers* of courts of equity, nevertheless the admiralty courts in determining controversies within their jurisdiction, are guided by fundamental principles of equity and natural justice. *Rea v. The Eclipse*, 135 U. S. 599, 608; *Kellum v. Emerson*, Fed. Cas. No. 7,669; *The J. Oswald Boyd*, 53 F. Supp. 103, 106; *The Kalfarli*, 277 Fed. 391, 394.

Benedict, in his treatise on Admiralty (Sixth Edition, Vol. 2, page 30) expresses the principle thus:

> "The court is bound to determine the cases submitted to its cognizance, upon equitable principles, and according to the rules of natural justice. This principle of the maritime law pervades the whole practice of the admiralty in the United States . . ."

To the same effect are the remarks of Mr. Justice Story in *The Virgin*, 33 U. S. 538, 550, wherein he observed that admiralty courts "in the exercise of their jurisdiction, are not governed by the strict rules of the common law, but act upon enlarged principles of equity."

Where a servant, by a deliberate act in violation of his contract of employment, causes financial loss to his master, it is but a matter of simple equity and justice that the servant, when presenting a claim for wages arising out of the contract of employment, should be held accountable to the master for the consequences of his wrongful act. Therefore it is quite natural, and consonant with the principles referred to above, that the general maritime law has established the rule that where a seaman, by a deliberate act in violation of his contract of employment, causes financial loss to the shipowner, the shipowner is entitled to recoup or set off its loss when faced with the seaman's claim for wages.

That is the right which Petitioner here asserts, and which was denied by the Courts below. The right is firmly rooted in the general maritime law, and its scope is clearly delineated by decisions involving a variety of factual situations. Reference to the decided cases confirms that the shipowner's right to mitigate its loss is founded upon the considerations of equity and natural justice which have become so deeply ingrained in the maritime law.

In *The T. F. Whiton*, Fed. Cas. No. 13,849 (D. C., S. D. N. Y., 1879), the second mate of a vessel filed a libel to recover the sum of $91.75 as wages allegedly due him. The vessel owner, by way of defense, averred that the libellant, during the course of the voyage, had committed an assault and battery upon the vessel's steward, with the result that the steward was severely injured and was in danger of losing his life. The vessel incurred a loss of $120.00 in sums paid for medical attention for the steward, and in the loss of the steward's services. The court held that

under these circumstances, there was nothing due and owing the libellant. The court said:

> "That such an act on the part of a seaman, whereby the vessel suffers damage or is put to expense, is to be considered in diminution of a claim for wages, has been often held (citing cases)."

The striking similarity between the facts of *The T. F. Whiton* and those of the case at bar is immediately apparent. Another case, *Macomber v. Thompson*, Fed. Cas. No. 8,919 (Circuit Court, Dist. Mass., 1833), stands for substantially the same proposition as does *The T. F. Whiton*. In *Macomber v. Thompson*, Judge Story was considering a factual situation in which a crew member had been insubordinate, had assaulted the second mate and the chief mate and had generally conducted himself in an insolent and mutinous manner. Judge Story said:

> "The charge thus set up in its actual presentation is certainly of a very high and aggravated nature. If it were completely borne out in its full extent by the evidence, it would call for the severe animadversion of the court. Some parts of the charge are, however, wholly unsupported, not only in form, but in substance."

The court then went on to point out that the shipowner had completely failed to establish that the losses which it attempted to set off against the wages claimed were directly attributable to the libellant's conduct, and therefore permitted only a partial set-off of the wages claimed. In the case at bar, there can be no question but that the amount of loss sustained by the Petitioner was the direct and proximate result of the Respondent's act in violation of the contract of employment.

There are many other analogous cases under the general maritime law where, in an action for wages by a seaman, the admiralty courts have permitted the vessel owner

to set off losses which it had sustained by reason of the libellant's dereliction of duty. In *The W. F. Babcock*, 85 Fed. 978 (C. A. 2, 1898), certain seamen left the vessel without cause, were arrested and taken before a Consul, and at the request of the master were delivered to the custody of Hawaiian police authorities. The shipowner was permitted to set off against their claimed wages the charges for their arrest and detention, the wages of their substitutes, and the amount which was necessarily paid by the vessel to the shore authorities as a penalty for the willful breakage of a shop window by the seamen on their way to the vessel under custody.

The Ellen Little, 246 Fed. 151 (D. C. Mass., 1916), was a case in which the libellant, an officer of the vessel, and other crew members took no measures to prevent the smuggling ashore of a stowaway, although libellant knew that the stowaway was aboard the vessel. Federal authorities detained the vessel for a few days, and other expenses were incurred by the ship as a result of the smuggling incident. The court deducted from the libellant's pay a proportion of the loss occasioned the shipowner commensurate with the libellant's fault as compared with that of other crew members, some of whom appeared to have been equally culpable.

In *Brown v. The Neptune*, Fed. Cas. No. 2,022 (D. C., E. D. Pa., 1829), the vessel owner was permitted to deduct from wages claimed, with respect to one libellant, the loss actually sustained by the vessel by reason of the libellant's wrongful absence from the ship, and with respect to another libellant, the vessel owner was permitted to deduct the value of an article belonging to the vessel which had been lost by his inattention and carelessness. In *Snell v. The Independence*, Fed. Cas. No. 13,139 (D. C., E. D. Pa., 1830), the shipowner was allowed to deduct a proportionate share of demurrage expenses occasioned by the libellant's refusal to perform duty, and also police costs and charges incurred as a result of the seaman's improper conduct while ashore.

See also *Scott v. Russell,* Fed. Cas. No. 12,546 (D. C., S. D. N. Y., 1848); and *The Marjory Brown,* 134 Fed. 999 (D. C., S. D. N. Y., 1905).

Two recent appellate decisions deal with the shipowner's right to set-off or recoupment under the general maritime law: *Oldfield v. The Arthur P. Fairfield,* 176 F. 2d 429, cert. den. 338 U. S. 879 (C. A. 9, 1949) and *Shilman v. United States,* 164 F. 2d 649, cert. den. 333 U. S. 837 (C. A. 2, 1947). Both of these cases will receive additional consideration in the following section of our argument. For present purposes; however, the following observations are relevant:

In the *Oldfield* case, a shipowner was permitted to set off against wages claimed, the seaman-libellant's pro rata share of a fine paid by the shipowner for release of the vessel, the fine having been imposed by Dutch customs officials because of a smuggling attempt in which the libellant had participated.

The *Shilman* case involved an attempt by the United States, in its capacity as shipowner, to set off against wages claimed by a seaman, the amount of a fine imposed upon the seaman by a United States Army court martial in a foreign country. The court cited several cases (including *The T. F. Whiton, supra,* at 164 F. 2d 652) under the general maritime law wherein set-offs had been allowed with respect to expenses incurred on behalf of the ship in connection with the voyage. The court then proceeded to distinguish the case before it from those arising under the general maritime law on the ground that, in the pending action, the shipowner was not seeking to recover any expenditure caused during the course of the voyage, or for the benefit of the ship; nor was there any evidence that the ship or her owner had suffered any loss by reason of the seaman's conduct. The clear implication of the *Shilman* opinion is that the Court of Appeals for the Second Circuit considered the cited cases under the general maritime law as authoritative and applicable upon their facts.

The foregoing cases stand, in general, for the proposition that a shipowner may set off against amounts otherwise owing to the seaman, the pecuniary loss sustained by the vessel as a direct result of the seaman's act in violation of the contract of employment. In particular, they hold that where a seaman has committed an assault upon another crew member, the set-off is allowable as to such losses as are proven to be the direct result of the assault: *The T. F. Whiton, supra,* and *Macomber v. Thompson, supra.* Under these authorities, and under the facts of the case at bar as found by the Trial Judge and approved by the Court of Appeals, it is clear that Petitioner had a right to recoup or set off its pecuniary loss when sued by the Respondent.

The rule laid down in the foregoing cases is by no means peculiar to the maritime law. Rather, these cases demonstrate that the maritime law, on this point, is no different from the law pertaining to the master-servant relationship in general. It is well settled that where a servant, by an act in violation of the contract of employment, causes pecuniary loss to his master, the servant is subject to *civil liability* to the master, and that the servant's civil liability may be successfully asserted by the master by way of set-off, counterclaim or recoupment, when the master is faced with an action for wages by the servant. *Restatement, Agency,* § 399 (g), (k); § 456; *Glennon v. Lebanon Mfg. Co.,* 140 Pa. 594; *Rosner v. Globe Valve Corporation,* 83 N. Y. S. (2nd) 496, aff'd. 87 N. Y. S. (2nd) 524; *Norris v. Cohen,* 223 Minn. 471, 27 N. W. (2nd) 277; *Greenleaf v. Huntingdon & B. T. M. R. & Coal Co.,* 3 F. R. D. 24; *Maratta v. Chas. H. Heer Dry Goods Co.,* 190 Mo. App. 420, 177 S. W. 718; 56 *Corpus Juris Secundum* (Master and Servant) § 77, 79 (pp. 500, 502).

II. The Court of Appeals Erred in Concluding That Petitioner Could Not Recoup or Set Off Its Loss Because Respondent's Conduct Did Not Fall Within Any of the Categories Enumerated in R. S. §4596, as Amended, 46 U. S. C. § 701. This Is a Penal Statute, and as Such Does Not Govern the Civil Rights and Liabilities of Seaman and Shipowner, Inter Se, in a Dispute Involving Solely the Amount of Money Owing by One to the Other at the Conclusion of the Voyage.

The cases under the general maritime law which we have previously discussed, and which establish the rule for which Petitioner here contends, were rejected by the Court of Appeals. In the view taken by the Court of Appeals, the case turned primarily upon the provisions of R. S. § 4596, as amended, 46 U. S. C. § 701.* The Court held that since Congress, in this statute, had "legislated in the field of assaults committed by seamen and saw fit to prescribe no penalty for an assault by seaman on seaman," it did not take the view "that such an assault must result in the loss of wages of the seaman assailant."

It is Petitioner's contention that the provisions of R. S. § 4596 are neither relevant nor controlling in the case at bar. R. S. § 4596 is a penal statute, but the question in the case at bar has nothing to do with crime and punishment. All that Petitioner asserts is the existence of a financial obligation to it on the part of Respondent, arising out of the employer-employee relationship, and the right to recoup or set off this obligation in the Respondent's suit which is founded upon the same relationship. In so doing, Petitioner is not attempting to punish or penalize Respondent; its object is not to impose discipline, but rather to secure recompense by an orderly adjudication of its civil rights and liabilities.

That R. S. § 4596 is penal in nature is readily apparent on its face. This statute lists eight categories of "offenses"

* Text is set out in Appendix annexed to this brief.

which a seaman can commit, for which he shall be "punished" in the designated manner. In many instances where the prescribed "punishment" includes loss of wages, the loss is described as a "forfeiture."

It is a familiar principle of statutory construction that the intent and meaning of the Legislature must be ascertained from the language of the statute, and the words used therein are to be given their ordinary meaning, unless the context shows that they are differently used. *A. Magnano Co. v. Hamilton*, 292 U. S. 40, 46-47; *Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 36. Applying this principle to the statute under consideration, it is difficult to see how Congress could have used language more calculated to compel the conclusion that the purpose of the Act was solely to define certain types of criminal conduct and provide punishment therefor, and nothing more. Nothing in the Act indicates, either directly or by implication, that the Act was in any way intended to affect civil rights and liabilities.

The language of R. S. § 4610, 46 U. S. C. § 711, which provides, *inter alia*, for the recovery of "penalties and forfeitures" imposed by R. S. § 4596 is likewise significant. The reference to "conviction," "imprisonment," "penalty" and words of similar import in R. S. § 4610 clearly reflects the nature of R. S. § 4596 and the objects sought to be attained thereunder.

Reference to the derivation of R. S. § 4596 is likewise enlightening. This section was derived from § 51 of the Act of June 7, 1872, c. 322, 17 Stat. 273. § 51 of the Act of 1872 immediately follows the general caption "Discipline of Seamen," and contains provisions which are similar in many respects to those now embodied in R. S. § 4596.

The opinion of the Court of Appeals does not reveal to Petitioner any disagreement on the part of the Court with Petitioner's contention as to the nature of R. S. § 4596. The point of departure is the analysis of the issues involved in the present controversy. The Court of Appeals persists in treating the problem in the case at bar as one of "disci-

pline" or "penalty," rather than of who owes whom how much, in which latter category it properly belongs.

The proposition of the Court of Appeals that R. S. § 4596 codifies the only circumstances under which a seaman may be subject to civil liability to his employer was recently flatly rejected by the Court of Appeals for the Ninth Circuit in *Oldfield v. The Arthur P. Fairfield*, 176 F. 2d 429, certiorari denied 338 U. S. 879. In the *Oldfield* case, the Court of Appeals permitted a shipowner to set off against wages claimed, the libellant's pro rata share of a fine paid by the shipowner for release of the vessel, the fine having been imposed by Dutch customs officials because of a smuggling attempt in which the libellant had participated. R. S. § 4596, in treating the subject of smuggling, deals only with acts of smuggling for which the offender had been convicted. In the *Oldfield* case, the libellant had not been tried for the offense of smuggling and *a fortiori* had not been convicted. Although § 4596 provides no "penalty" or "punishment" for the seaman under these circumstances, the Court of Appeals held that this fact cannot be construed as an abolition of the equitable right of recoupment belonging to the shipowner.

The Court of Appeals for the Second Circuit in *Shilman v. United States*, 164 F. 2d 649, certiorari denied 333 U. S. 837, likewise rejected by implication the contention that the shipowner is without a civil remedy where the seaman's conduct in violation of the contract of employment has caused pecuniary loss to the vessel's interests. The *Shilman* case involved an attempt by the United States, in its capacity as shipowner, to set off against wages claimed by a seaman, the amount of a fine imposed upon the seaman by a United States Army court martial in a foreign country. The Court of Appeals (at 164 F. 2d 651) first referred to various statutory provisions which authorized deductions from wages. It then cited several cases (including *The T. F. Whiton*, *supra*, at 164 F. 2d 652) under the general maritime law wherein set-offs had been

allowed with respect to expenses incurred on behalf of the ship in connection with the voyage. The Court then proceeded to distinguish the case before it from those arising under the general maritime law on the ground that, in the pending action, the shipowner was not seeking to recover any expenditure caused during the course of the voyage, or for the benefit of the ship; nor was there any evidence that the ship or her owner had suffered any loss by reason of the seaman's conduct.

True it is that at one point in the *Shilman* opinion (at 164 F. 2d 650-651) the Court, after noting certain statutory provisions, said that the sections quoted "look towards payment to the seaman by his employer, at the termination of the employment, of all of his earned wages, without any deductions except those which are expressly authorized by statute." This language, however, is necessarily qualified by, and must be construed in the light of the Court's subsequent references to the aforementioned cases under the general maritime law, and the Court's distinction of the pending case from the factual situations therein. The clear implication of the *Shilman* opinion is that the Court of Appeals for the Second Circuit considered the cited cases under the general maritime law as authoritative and applicable upon their facts.

The Court of Appeals for the Ninth Circuit, in the *Oldfield* case, recognized this implication of the *Shilman* opinion. In reaching its conclusion, the Court in the *Oldfield* case noted (at 176 F. 2d 431) that the "right of recoupment has . . . recently been recognized again" in the *Shilman* case, and quoted extensively from that portion of the *Shilman* opinion which cited cases under the general maritime law supporting the right of the shipowner to set off losses incurred by the ship in connection with the voyage, as the result of the seaman's conduct.

The view taken by the Court in the *Oldfield* case as to the efficacy of the general maritime law, the statute notwithstanding, in controversies involving civil liabilities

finds a striking parallel in the construction given over a century ago by admiralty courts to the Act of July 20, 1790, c. 29, 1 Stat. 131 *et seq.* This Act contained, inter alia, the forerunner of the sections of R. S. § 4596 dealing with the offenses of absence from duty and desertion on the part of seamen.

Judge Story, in *Cloutman v. Tunison,* Fed. Cas. No. 2,907 (C. C., D. Mass., 1833), held unequivocally that the Act of 1790 merely created certain statutory offenses, and did not in any way impair the maritime law. "It does not supersede the general doctrine of the maritime law; or repeal it; but merely in a given case applies a particular rule *in poenam,* leaving the maritime law in all other cases in full efficiency" (at 5 Fed. Cas. p. 1094).

This principle was reaffirmed by Judge Story in *Coffin v. Jenkins,* Fed. Cas. No. 2,948 (C. C., D. Mass., 1844), wherein Judge Story referred to the desertion proscribed by the Act of 1790 as "an auxiliary statute desertion, distinguished from and independent of that of the maritime law . . ." (at 5 Fed. Cas. p. 1190). In 1883, Judge Addison Brown in *Welcome v. The Yosemite,* 18 Fed. 383, referred to the principle enunciated by Judge Story as "the settled construction" of the Act of 1790, reiterating that the provisions of the Act of 1790 "were designed to supplement the maritime law, and not to repeal or to supersede it" (at 18 Fed. 384). To the same effect, see *The John Martin,* Fed. Cas. No. 7,357 (D. C., E. D. Mich., 1870) and *The Osceola,* Fed. Cas. No. 10,602 (D. C., S. D. N. Y., 1846).

The provisions of R. S. § 4529, 46 U. S. C., § 596, referred to by the Court of Appeals in the case at bar are likewise irrelevant to the question presented. This statute provides for the recovery of "double wages" by the seaman in instances where his wages have been withheld "without sufficient cause" beyond certain stated periods after the termination of his engagement. This statute deals solely with the *time* for payment. It does not undertake to liquidate the amount, if any, owing to the seaman at the

termination of the voyage, nor does it even suggest a limitation upon the defenses, set-offs, or other claims which may be asserted by the shipowner in a suit by the seaman for wages after the termination of the voyage. It is worth noting, in passing, that this statute is in itself an effective deterrent to arbitrary or capricious refusal to pay a seaman's wages. The denial to the shipowner of the right of recoupment or set-off here asserted by Petitioner is clearly unnecessary to achieve that purpose.

In construing R. S. § 4596 to deny to Petitioner the right of set-off or recoupment, the Court of Appeals has disregarded the principle enunciated by this Court in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 437, that

> ". . . repeals by implication are not favored, and . . . a statute will not be construed as taking away a common-law right existing at the date of its enactment, unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

To the same effect is *Shaw v. Merchants' National Bank of St. Louis*, 101 U. S. 557, wherein this Court pointed out that a statute will not be construed as altering the common law, further than its words import, nor as making any innovation upon the common law which it does not fairly express.

When R. S. § 4596 was enacted, the shipowner's right of set-off or recoupment, as the cases previously cited demonstrate, was already firmly established in the general maritime law, the common law of the sea. Nothing in the language of the statute, in the circumstances surrounding its enactment, or in the particular factual situation presented by the case at bar, indicates or even suggests that

the statute in any way affects the right presently asserted by Petitioner. The statute simply provides penal sanctions for certain offenses, whereas the general maritime law establishes the civil rights and liabilities of the seaman and shipowner, *inter se*.

Thus there is no conflict between the general maritime law and the statutory law; on the contrary, they are wholly compatible, and in a sense complementary, when one considers the obvious difference in underlying purpose between these two separate sources of law. Viewed in this light, their co-existence is natural, and detracts nothing from their mutual vitality. Each source of law is properly operative in its own sphere, and in the present case it is the general maritime law, fixing civil rights and liabilities, which is determinative of Petitioner's rights, and establishes that Petitioner was entitled to set off or recoup its pecuniary loss when sued by the Respondent.

III. The Court of Appeals Erred in Invoking the Doctrine That "Seamen Are Wards of the Admiralty" to Support Its Denial of the Equitable Right of Set-off or Recoupment to the Petitioner.

Certain considerations of policy appear to have influenced the Court of Appeals' construction of the statutes discussed in its opinion, and thus led to the decision ultimately reached. It is therefore necessary to appraise the validity of the policy advanced by the Court of Appeals in support of its reasoning if, as we have previously argued, that Court has disregarded well established rules of statutory construction *aliunde*.

The major premise of the Court of Appeals' dissertation on the policy underlying its decision seems to be that seamen are "wards of the admiralty." Born of the pronouncement of Justice Story in *Harden v. Gordon*, Fed. Cas. No. 6,047 (C. C., D. Maine, 1823), the "wardship"

doctrine pervades the maritime law. *Hume v. Moore-McCormack*, 121 F. 2d 336, 337; *The Arizona v. Anelich*, 298 U. S. 110, 123; *Warner v. Goltra*, 293 U. S. 155, 162; *Socony-Vacuum Oil Co. v. Smith*, 305 U. S. 424, 431.

The wardship doctrine had its origin in a bygone era when service in the merchant marine was something akin to serfdom. Its object was to mitigate by judicial solicitude the intolerable conditions which attended maritime employment in the early days of American merchant shipping. Petitioner deems it unnecessary to discuss in this brief the abstract question of whether, in this day of enlightenment in employment relationships, there remains any genuine necessity for the application of the wardship doctrine in the maritime law. We may even assume, for present purposes, that in a controversy where the equities are closely divided between seaman and shipowner, the doctrine may be determinative of the result.

However, Petitioner earnestly submits that the doctrine can have no application whatever to the situation presented by the case at bar. Here the doctrine was invoked to exculpate from civil liability a seaman who had attacked with a deadly weapon and seriously wounded a shipmate. What is more, this exculpation saddled an innocent shipowner with financial loss almost three times as great as the amount awarded the seaman.

We cannot think that any conscientious guardian would countenance, much less lend tacit encouragement to this type of conduct by insulating his ward from the civil consequences of his acts, especially to the detriment of an innocent party. Certainly it is not part of the protective function of the guardian to prevent payment of that which is in good conscience owing by the ward. Nor do we think there can reasonably be ascribed to Congress the conscious intention of sanctioning condonation of the type of conduct here exhibited by Respondent. In short, a policy which was originally judicially formulated with the intention of

preventing overreaching of the seaman has here been made an instrument to achieve overreaching by the seaman.

At this point we would reiterate the proposition with which this brief commenced: that admiralty courts have traditionally exercised their jurisdiction upon basic principles of equity and natural justice. Their determinations are frequently the product of the exercise of a sound discretion based upon these principles. In the process of decision, therefore, it is not objectionable *per se* that considerations of policy should exert an influential force.

But when, as in this case, we have reached the point where "policy" is interpreted solely in terms of unrelenting, automatic adherence to a familiar maxim—"seamen are wards of the admiralty"—in disregard of the purpose behind the policy, and without regard for the fact that a palpable injustice is being wrought, an authoritative definition of the bounds of the legitimate application of the doctrine is imperatively required. Since the wardship doctrine has become, in effect, a substantive part of the maritime law, it is peculiarly appropriate that this Court delimit the field of its operation to situations where its impact is not offensive to fundamental notions of justice. Appropriately applied, the doctrine can subserve a justifiable purpose consistent with the cardinal principle of equity underlying the admiralty law. Indiscriminately applied, the doctrine debases the purpose which is the sole justification for its existence.

Petitioner therefore urges this Court to examine and correct the misapplication of the wardship doctrine which was instrumental in producing the result in the case at bar.

CONCLUSION.

For the reasons heretofore advanced, Petitioner submits that the judgments in the Courts below should be reversed and the case remanded with directions to enter judgment in favor of Petitioner and against Respondent.

Respectfully submitted,

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APPENDIX TO PETITIONER'S BRIEF.

Text of R. S. § 4596, as Amended, 46 U. S. C. § 701.

"Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses, he shall be punished as follows:

"First. For desertion, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned.

"Second. For neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion, by forfeiture from his wages of not more than two days' pay or sufficient to defray any expenses which shall have been properly incurred in hiring a substitute.

"Third. For quitting the vessel without leave, after her arrival at the port of her delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

"Fourth. For willful disobedience to any lawful command at sea, by being, at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

"Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea, by

being, at the option of the master, placed in irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of a sum of not more than twelve days' pay, or by imprisonment for not more than three months, at the discretion of the court.

"Sixth. For assaulting any master, mate, pilot, engineer, or staff officer, by imprisonment for not more than two years.

"Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

"Eighth. For any act of smuggling for which he is convicted and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability, and he shall be liable to imprisonment for a period of not more than twelve months."